

Urgensi Pengaturan Tanggung Jawab Majikan Terhadap Karyawan dalam Perjanjian Franchise Berbentuk Business Format Franchise = The Urgency of Setting Regulations on Vicarious Liability of Employers for Employees in Business Format Franchise Agreements

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Abstrak

Tulisan ini menganalisis bagaimana prinsip Vicarious Liability majikan terhadap perbuatan melawan hukum yang dilakukan oleh karyawan franchise perlu diatur dalam peraturan perundang-undangan di Indonesia demi menjamin kepastian hukum dan keadilan. Penelitian ini menggunakan metode penelitian doktriner dengan pendekatan terhadap putusan-putusan pengadilan di Amerika Serikat. Vicarious liability merupakan asas yang memungkinkan seseorang bertanggung jawab atas perbuatan melawan hukum yang dilakukan oleh orang lain atau benda di bawah pengawasannya. Meskipun vicarious liability telah diakui dalam Pasal 1367 KUHPerdara, hingga saat ini belum ada pengaturan atau putusan hukum yang secara eksplisit mengatur tanggung jawab franchisor dalam perjanjian franchise di Indonesia. Fokus pengaturan di Indonesia saat ini hanyalah berdasar pada perjanjian kerja saja. Sebaliknya, di Amerika Serikat, vicarious liability majikan pada bisnis franchise telah dikenal luas, dengan banyak putusan pengadilan yang menetapkan bahwa franchisor maupun franchisee dapat dimintai pertanggungjawaban atas tindakan karyawan franchisee apabila terbukti memiliki kontrol signifikan terhadap operasi franchisee. Pendekatan ini memberikan perlindungan hukum yang lebih luas dengan mempertimbangkan hubungan antara franchisor dan franchisee, terutama jika franchisor memiliki pengaruh besar terhadap manajemen operasional franchisee. Untuk memberikan kepastian hukum dan keadilan di Indonesia, perlu adanya pengaturan mengenai tanggung jawab franchisor atas tindakan karyawan franchisee, khususnya dalam situasi di mana franchisor memiliki kontrol signifikan terhadap aspek operasional franchisee. Pengaturan ini dapat mencakup batasan dan kriteria yang jelas terkait pengaruh franchisor, sehingga tanggung jawab hukum tidak hanya bergantung pada perjanjian kerja antara franchisee dan karyawan, tetapi juga mencakup hubungan hukum antara franchisor dan franchisee.

.....This paper analyzes how the principle of Vicarious Liability of employers for unlawful acts committed by franchise employees needs to be regulated in Indonesian laws and regulations in order to ensure legal certainty and justice. This study uses a doctrinal research method with an approach to court decisions in the United States. The concept of vicarious liability is a principle that allows someone to be responsible for unlawful acts committed by another person or object under his/her supervision. Although vicarious liability has been recognized in Article 1367 of the Civil Code, to date there has been no regulation or legal decision that explicitly regulates the responsibility of franchisors in franchise agreements in Indonesia. The focus of regulation in Indonesia is currently only based on employment agreements. In contrast, in the United States, the concept of vicarious liability in the franchise business is widely known, with many court decisions establishing that both franchisors and franchisees can be held liable for the actions of franchisee employees if they are proven to have significant control over the franchisee's operations. This approach provides broader legal protection by considering the relationship between the franchisor and franchisee, especially if the franchisor has a significant influence on the franchisee's operational management. To ensure legal

certainty and justice in Indonesia, there needs to be a regulation regarding the franchisor's liability for the actions of franchisee employees, especially in situations where the franchisor has significant control over the operational aspects of the franchisee. This regulation can include clear limitations and criteria regarding the franchisor's influence, so that legal liability does not only depend on the employment agreement between the franchisee and the employee, but also includes the legal relationship between the franchisor and the franchisee.